

Appn. Number 09/641,410 (Kiely)

GAU 1761

Amendment C 6

**Remarks – General**

In response to the Office Action of May 8, 2007, Applicant has rewritten the claims in order to place them in proper condition for allowance.

**Support for claims:****A composite ingredient:**

"Nestle Bites," a composite candy, is used in Applicant's support as an ingredient.

Nestle Bites "Kit Kat," comprises a composite layered wafer cookie and cream combination in the shape of a ball that is dipped in chocolate. Applicant specifies that this composite candy can be used as a composite ingredient in any of Applicant's supports. Applicant refers to this composite ingredient under the term "fun ingredient." Other varieties are available.

*"A bite sized fun ingredient 100 sold under the trademark Nestle Bites, also of Nestle Incorporated, which has several flavors, may be added to confection 84 or an edible support for additional enjoyment. [0168];*

*"Additional "fun ingredients 100 may be attached or embedded" [0394];*

*"Frozen and non-frozen confections and supports can have mini-colored or flavored chips in them, mini size pieces of individually coated (or non-coated) candies, crisped rice, nuts, etc., layers or swirls of different colors and flavors." [0365];*

Please see: Nestle Bites - see attached image of Nestle Bites, Kit Kat, and website:

[http://www.mygroceryshop.com.au/index.php?main\\_page=product\\_info&products\\_id=14541;](http://www.mygroceryshop.com.au/index.php?main_page=product_info&products_id=14541)

please also see:

EDIBLE COMPOSITE / COMPOSITE MATERIAL

<http://www.reference.com/search?q=composite%20material>

*"Composite material or composite, any material made from at least two discrete substances, such as concrete."*

Appn. Number 09/641,410 (Kiely)

GAU 1761

Amendment C 7

<http://mmc-assess.tuwien.ac.at/2index.htm>

Composite: a composite (or composite material) is defined as a material that consists of at least two constituents (distinct phases or combinations of phases) which are bonded together along the interface in the composite, each of which originates from a separate ingredient material which pre-exists the composite.

Please see "essential elements of this definition, composite, elements I, II," [composite refers to *a material, as opposed to a structure or a component...* thus it should be distinguished from a wing or other structure made of several components bonded together...]

See also:

[class/subcl 426/89 definition](#)

### Claim Objections:

Claim 234 was objected to as it had a step marked 4 between steps c) and d). This has been omitted.

### 35 U.S.C. Section 101

Claim 245 is rejected under 35 U.S.C. Section 101 as the terminology, "two dimensional flattened support," is unclear. "two dimensional flattened support," has been omitted.

### 35 U.S.C. Section 112 First Paragraph

Claims 229-258 are rejected under 35 U.S.C. Section 112, first paragraph, since the Examiner suggests that the term "composite ingredient," does not have support in the original disclosure.

Applicant teaches of a bite sized edible composite, (material- Tuwien, above) candy called Nestle Bites of Nestle Incorporated, which is a composite candy comprising a bite sized portion of Kit Kat (or other variety, etc.) candy coated in chocolate. Applicant includes this bite sized ball-like candy under the wording, "fun ingredient." This fun ingredient can be added or embedded to any

Appn. Number 09/641,410 (Kiely)

GAU 1761

Amendment C 8

of Applicant's supports for "added enjoyment." Please see above: [0168]; [0394]. Also, mini size coated candies may be included in any of Applicant's supports as composite ingredients [0365]; Please see attached image of Nestle Bites.

Claim 236 is rejected as "composite ingredient is other than an edible coating." This terminology has been omitted.

### **35 U.S.C. Section 112 Second Paragraph**

Claims 229-258 are rejected under 35 U.S.C. Section 112 Second Paragraph as the terminology of "a composite ingredient(s)," "composite member," "candy composite," "composite candy," "composite candy support," and "two dimensional flattened support," is said to be unclear. This terminology has been omitted, or remedied in the rewritten claims.

Claims 238, 241-248, and 258 are indefinite for the recitation of, "the supported frozen comestible... comprising a plurality of ingredients for supporting the said frozen comestible comprising sugar..., wherein said plurality of ingredients comprise an indiscernible ingredient, a discernible ingredient, an individual ingredient or a composite ingredient." This terminology has been omitted.

The relative terms of "sufficient surface area and adherence," and "sufficient surface area," "utilitarian support," "widened surface," "flattened surface," "easier gripping surface," "longer shelf life," or "longer shelf life in a store," "extra adherence," "suitable size and shape," "proper thickness," have been omitted. The term, "whimsically shaped supported frozen comestible," has been omitted in light of the coverage of the rewritten claims.

The term "a vertically orientated support," has been omitted. The terms "a handled support" and "sandwiching support" have been remedied.

Claims 234, 240, 244, and 248 are said to be indefinite and further rejected under 35 U.S.C.

section 112, as the preamble of the claim is directed to "the supported frozen comestible wherein said moisture barrier comprises a) - h), where the options have been written as use of or as active method steps. All references to method claims have been omitted.

Claim 235, "wherein said composite ingredient comprises enrobed or dipped ingredient, wherein said composite ingredient comprises a whipped nougat dipped in a chocolate coating, " is noted to be indefinite. These properties have been properly rewritten.

The terminology of "suitable amount of moisture, shortening, sugar, air, and air bubbles in a composite ingredient," "particles thereof," "mixed particles thereof," "coated particles thereof," and "candy supported frozen comestible," in claim 239, have been omitted.

Claim 239, "the candy ... comprising an edible member on said composite ingredient support, wherein said edible member comprises a lollipop... , an inedible portion comprising wood, plastic..., wherein said edible member comprises licorice said composite ingredient further comprises a plurality of edible members, wherein said composite ingredient support comprises an edible member, an inedible member or a composite member," is said to be unclear. This language has been remedied, or omitted. The Markush-type language has been remedied.

Claims 253-258 are said to be indefinite for the recitation of "a composite ingredient for subsequently supporting a frozen comestible." This terminology has been omitted.

Claim 241 that recites, "edible composite support," and "frozen comestible of claim 241," and also claims 249 and claim 251 respectively, are said to fail to further limit the invention. The claims have been remedied with respect to properly narrowing or broadening the claims.

#### **Musher Teaches of a Structure Made of Edible Components, Not of an Edible Composite**

Claims 229-258 are rejected under 35 U.S.C. 102(b) as being anticipated by Musher (US 2,217,700).

Appn. Number 09/641,410 (Kiely)

GAU 1761

Amendment C 10

The Examiner suggests that since the edible stick as taught by Musher is attached to the cereal flakes, sugar, candy flakes or ribbons, grains, hard fat flakes or ribbons, that Musher teaches of a frozen comestible, and a composite ingredient for supporting the frozen comestible, Musher anticipates Applicant's claims.

The Examiner also suggests that Musher teaches a composite support having two discernable edible members wherein one portion extends into the ice cream and the other portion extends out of the ice cream for holding the frozen confection vertically.

### Reference Material

please see:

<http://mmc-assess.tuwien.ac.at/2index.htm>

Please see "general definitions, composite, elements I, II," [composite refers to *a material, as opposed to a structure or a component...* thus it should be distinguished from a wing or other structure made of several components bonded together...]

See also:

[class/subcl 426/89 definition](#)

Musher teaches of a *durable structure*, (col. 1, lls. 36 - col. 2, lls. 1-55) within these two columns, Musher teaches of: a "*framework structure* which may be used as a much more durable *foundation, support or structure* for ice cream," "*durable structure*," "*framework*," "*flake structure*," "...*high starch structure pieces*," "Further in producing *the frame or structure* of this embodiment, hard sugar pieces may be used, as for instance in the form of ribbons or flakes."

Musher teaches of a structure made of edible components: "The flakes or ribbons, *or other structure pieces* as for instance corn flakes, sugar ribbons and so forth... so as to provide better anchorage qualities or better adhesive *foundations* or better structural strength, or other characteristics." (Col. 2, lls. 1-10) "*In preparing the structure of this invention* in conjunction with frozen confections... *the structure if first made by mixing the structure pieces, as for instance the corn flakes, potato chips, etc.*, with the binder material such as the molten hard fat or

Appn. Number 09/641,410 (Kiely)

GAU 1761

Amendment C 11

the heavy sugar syrup.” ( col. 3, lls. 32-40) .

Musher’s flakes or ribbons and corn flakes and potato chips, etc. are components of a structure, or foundation, and are therefore not a composite material or a composite ingredient, i.e. composite material ingredient, [composite refers to *a material, as opposed to a structure or a component*... thus it should be distinguished from a wing or other structure made of several components bonded together...], Tuwien, above. The structure of Musher, will always be as Musher describes, i.e. as a framework structure, and will not be available as a material to be used in different processes, such as layering, being formed concentrically, being extruded, twisted together, or molded into a solid piece. All of these processes are not amenable to the structure of Musher, as Musher desires open interstices, (Examiner page 12, para. 3) such as a “lattice” shaped configuration (page 1, col. 2, lls. 21-30:

Musher teaches: (page 2, col. 1, ll. 28-32, “to provide more open spaces within the unit for the frozen confection than is provided by various types of flat flakes.”) and so forth. (Page 3, col. 1, ll. 75- col. 2, lls. 1-13, “ it is preferable, if any compression or compacting is used, to compact these structure pieces together rather lightly, so as to result in a product which has a large number of large openings throughout. This is, of course, an important embodiment that is accomplished by this invention, in that it provides a framework for the frozen confection or similar confection, so as to produce a durable structure to act as the framework, but, *at the same time it further provides an even larger amount of space within the unit structure* in order to enable as much ice cream or other similar product to be impregnated or filled into the structure.”)

Musher teaches of a “framework structure,” (page 1, col. 1, lls. 9-14) and (Examiner page 12, para. 1,3,4 of OA, page 13 Response). Since Musher teaches of an edible structure having edible components, Musher does not teach of an edible material anywhere in his patent, since a structure is not a material, see Tuwien, above, “composite refers to a material, as opposed to a structure or a component.” Since he does not teach of an edible material, he does not teach of Applicant’s support comprising an edible composite, edible composite material, edible composite topping, edible composite ingredient, or edible composite (material) support.

Appn. Number 09/641,410 (Kiely)

GAU 1761

Amendment C 12

Musher teaches of a foundation, or a structure and components that make up the structure. Applicant's material is advantageous since an edible composite, or edible composite material, can be used for a great many more shapes and applications. Also an edible composite can use a myriad of ingredient materials, such as even a liquid ingredient, that can be changed to accommodate the requirements of a desired result. An edible composite is strong, when needed, or soft when a softer texture is desired. It can offer many different tastes, or combinations of tastes where the ingredients can be individually tasted. A sizable advantage is that an edible composite can be as versatile as desired, in size, shape, taste, durability, texture, and other qualities. Edible composite supports can also be made at lower temperatures than baked or boiled structures, and made using many different processes, such as layering, mixing, wrapping, extruding, and filling a core, for example, for easier manufacturing.

Therefore, Applicant submits that her system is both novel and unobvious over Musher, the prior art, and combinations thereof, and submits that the independent claims and hence all claims should be allowed.

The dependent claims recite additional features of the invention in combination with the features of the independent claims and therefore Applicant respectfully submits that they are *a fortiori* allowable.

### **Conclusion**

For all of the above reasons, Applicant submits that the claims now define novel structure under §102, which novel structure is unobvious and thus patentable under §103. Accordingly, Applicant submits that allowance of claims 259-288 is warranted and respectfully requests such action.

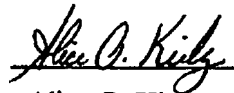
### **Conditional Request For Constructive Assistance**

Applicant submits that she has a novel and unobvious invention. She has made a diligent effort to amend the claims of this application so that they recite novel features of her invention, which she

Appn. Number 09/641,410 (Kiely)GAU 1761Amendment C 13

submits are unobvious. If, for any reason, the Examiner believes that the claims of this application are not yet in full condition for allowance, Applicant respectfully requests the Examiner's constructive assistance and suggestions pursuant to the spirit of MPEP §706.03(d) and §707.07(j). This will enable the undersigned to place this application in fully allowable condition as soon as possible and without the need for further proceedings.

Very Respectfully,

  
Alice O. Kiely

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Certificate of Facsimile: I certify that on the date below, this document and referenced attachments, if any, will be faxed to the central fax number of 571-273-8300 to the United States Patent and Trademark Office "Commissioner for Patents" Arlington, Virginia 22313.

2007 August 8,

  
Alice O. Kiely

Attached:

Image of Nestle Bites (Kit Kat)  
a bite sized composite candy



Bites Kit Kat 115g : Online Grocery Shop, Noosa and Sunshine Coast groceries delivered to your ... Pag 1

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APPN. NUMBER 09/641,410 (KIELY) GAD 1761



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